

December 19, 2006

E-Filed

Magistrate Judge Mary Pat Thyng  
United States District Court  
District of Delaware  
J. Caleb Boggs Federal Bldg  
844 North King St., Room 6100  
Lockbox 8  
Wilmington, DE 19801

Re: Carter v. Marmon Keystone  
C.A. No.: 05-311KAJ

Dear Judge Thyng:

I represent Marmon/Keystone Corporation ("Marmon Keystone") in the above captioned matter. Judge Jordan was the presiding judge in the matter. This case involves a wrongful termination of employment.

Anthony Carter, Sr., ("Mr. Carter") initiated this action on May 19, 2005 by filing a Complaint with the Court. Mr. Carter sent a request for waiver of service to Marmon Keystone, however he failed to include a copy of the Complaint with his request. On November 11, 2005, Marmon Keystone filed and served on Mr. Carter a *Motion to Dismiss* under Fed.R.Civ.P. 12(b)(4) and (5) because, in contravention of Rules 4(m) and 4(d)(2)(C).

On November 28, 2005, Mr. Carter filed a *Motion of Right of Appeal*. In his pleading, Mr. Carter stated he did not know a copy of the Complaint should have accompanied his request for waiver of service. In an attempt to correct defective service, Mr. Carter attached a copy of a "complaint" to his pleading. However the attachment was the Charge of Discrimination he filed with the Department of Law and the Equal Employment Opportunity Commission, not the Complaint he filed with the Court. On

December 5, 2005 Marmon Keystone filed a *Reply in Support of Motion to Dismiss*.

On April 7, 2006 Judge Jordan denied Marmon Keystone's Motion to Dismiss and ordered that Mr. Carter had 30 days to comply with Fed.R.Civ.P. 4. Therefore, Mr. Carter had until May 8, 2006 to comply with Judge Jordan's Order. On April 17, 2006 Mr. Carter served on counsel for Marmon Keystone a Summons in a Civil Case, but failed to serve a copy of his Complaint. On June 8, 2006 Marmon Keystone filed and served on Mr. Carter a *Renewed Motion to Dismiss*.

On June 23, 2006 Mr. Carter filed with the Court an *Affidavit of Active Duty*. According to the Affidavit Mr. Carter would be on active duty from June 24, 2006 through July 7, 2006. Mr. Carter has not responded to our Motion nor has Mr. Carter complied with Judge Jordan's Order.

It has been several months since the Motion was filed. The matter sits in limbo due to Judge Jordan's elevation to the Third Circuit. Marmon Keystone requests that you rule on the Motion or assign the matter to another Judge to rule on the Motion.

Your attention to this matter is greatly appreciated. If you have any questions or concerns please do not hesitate to contact me.

Very truly yours,

/s/ Bayard J. Snyder (DE #175)

Bayard J. Snyder

cc: Mr. Anthony Carter, Sr.  
By U.S. Mail  
Floyd Clutter, Esq.  
By Fax (412) 209-1850  
PD Thyng-FX-Rule on Motion.wpd